HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

C.R. No. 201 of 2001
(Old No. 526 of 1998)

Sh. Bir Singh Negi

Vs.
Smt. Shashi Thapliyal

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 29.09.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 201 of 2001

(Old No. 526 of 1998)

Sh. Bir Singh Negi ...Defendant/Applicant.

Vs

Smr. Shashi Thapliyal ....Plaintiff/opp. Party

Dated: 29-9-2004

Hon'ble Rajesh Tandon, J.

By the present revision the applicant has prayed for quashing the order dt. 6-11-1998 by which the decree for eviction has been granted against the defendant applicant.

Factual Aspect of the Case

Briefly, stated s suit was filed by the plaintiff in respect of premises No. 21 Nagar Palika Pauri. The plaintiff has prayed for eviction of the defendant applicant on the ground of arrears of rent from May 1992 to 13th December 1994. The plaintiff has stated that the defendant is a tenant at the rate of Rs. 600 per month and he has not paid the rent from May 1992 to October 1994 and hence a notice was sent on 2nd July 1994and 8th November 1994, which was duly received on 14-11-1994. The plaintiff has also claimed the damages at the rate of Rs. 20 pr month.

The defendant has field has written statement. In paragraph 2 it has been stated that he wanted to deposit the

entire rent under Sub Clause 4 of Section 20 of the U.P. Act No. 13 of 1972 unconditionally. But at the same time he has stated that although the landlord is not entitled to get the said amount. The defendant has deposited a sum of Rs. 30233 by stating that the landlord is not entitled for the same.

The respondent landlord has stated in his reply by stating that the deposit under Section 20(4) of the Act was conditional and therefore no benefit can be given to the defendant applicant.

Judge Small Cause Court has recorded a finding that since the deposit was conditional therefore no benefit can be extended to the defendant. The present revision under Section 25 of the Provincial Small Cause Court has been field against the order of eviction.

Deposit Made Under Section20(4) Of The Act.

Counsels of both the parties have not disputed that the suit has been decreed for a sum of Rs. 213364/- whereas the amount, which was deposited was Rs. 30233/-.

In paragraph 2 of the application, the details have been given to the following effect:-

''कि प्रतिवादी उ0 प्र0 अधिनियम सं0–13 सन1972 की धारा–20 के उपखण्ड –4 के तहत निम्न धनराषि माननीय न्यायालय में बिना शर्त के जमा करना चाहता है।यदयपि वादी विधिक रूप से उक्त रकम को पाने हकदार नही है।''

Counsel for the landlord could not point out that the water tax is much more than Rs. 2500/- as the amount or Rs.

2500/- has been deposited in addition to the amount claimed by the plaintiff. In the plaint the plaintiff has claimed the following amount:-

''माह 1 मई 92 से 31 अक्टूबर 94 तक जलकर – 2250/–

मह मई 92 से अक्टूबर 94 तक बिजली मूल्य 25=80''

The plaintiff therefore has claimed the water tax only to the extent of Rs. 2250/-, therefore the same having been deposited by the defendant. The learned Judge has held as under:-

> *"The burden to prove that water tax is to be paid to the municipality or Maha Nagar Palika and its exact amount lies on landlord. If he fails to discharge his burden be has to blame himself, in absence of such proof, tenant cannot be held liable to pay water tax. Even if rent of certain, months was not deposited, but if the total amount deposited covers the entire amount of these months also. It can be adjusted as rent for those rent in compliance of Section 20(4)."*
>
> *"Regarding payment of water tax, it has not been disputed by the defendant that water tax was not payable or it was not paid by the plaintiff-landlord. The evidence on record edduced by the defendant does not prove this fact that the monthly rent which was payable by the defendant included house tax also. It has also not been disputed that water tax at the rate of 12.5% of the total rent was payable."*

In Mam Chand Pal Vs. Smt. Shanti Agarwal 2002(1) ARC 370, it has been held by the Apex Court as under:-

> *"According to the appellant alternatively the matter can be viewed from another angle as well. As per the respondent there has been a shortfall of the amount payable on account of Counsel's fee, which was deposited only after 26.04.1989. In this connection, it may be observed that under sub-section (4) of section 20 arrears of rent, damages for use and occupation, interest, costs of litigation is required to be deposited. There is no requirement of depositing any other amount or electricity charges. Admittedly the petitioner had deposited a sum of Rs. 358/- also as electricity charges. The amount on account of fee of the lawyer was a sum of Rs. 375, the amount of electricity charges could well be adjusted or treated to be as against lawyer's fee. A minor deficiency of Rs. 17/- only against the total amount deposited near about six thousands or around that would be inconsequential and in significant to defeat the purpose of enacting the relevant provisions as contained in sub-section (4) of Section 20 of the Act. It would only be a hyper technical view of the matter which would in no way serve the ends of justice even where virtually and substantially requirement of the legal provision is stands satisfied."*

"In one of the case relating to landlord-tenant dispute, decided by the Allahabad High Court reported in Dr. Neelambar Jha Vs. First Additional District Judge, Gorakhpur and others, 1982 ARC 555, It has been held that if some amount is deposited in excess under on head the same can be adjusted towards the shortfall of an amount under above any other head."

"After the Suit was field that tenant was too willing and ready to clear all the dues so much so that he did it before the first date of hearing and made subsequent deposits as well to make it up to date. We feet that the whole propose of enacting sub-section (4) of Section 20 of the Act is to do substantial justice between the parties. It covers those cases alone where the ground for eviction is default in payment of rent still the Legislature intended to provide an opportunity to a tenant for payment of rent. On availing of such an opportunity, equities between the parties are leveled as the landlord gets the amounts of arrears of rent and damages along with legal expenses and interest on the defaulted amount and the tenant is saved of liability of being thrown out of the premises. While considering the import of such provisions, it may have to be seen that the requirement of law is substantially and virtually stands satisfied. A highly technical view of the matter will have no place in construing compliance

of such a provision. We may however, hasten to add that it is not intended to lay down that non-compliance of any of the requirements of the provision in question is permissible. Al the dues and amounts liabel to be paid have undoubtedly to be paid or deposited on the date of first hearing but within that framework virtual and substantial on the date of first hearing but within that framework virtual and substantial compliance may suffice without sticking to mere technicalities of law."

Conditional/Un-conditional

Arguments with regard to deposit being conditional it has already indicated above that the defendant has deposited the amount under sub-section (4) of Section 20 of the Act by filing the application. In the written statement there is no averment that the amount may not be permitted to be withdrawn by the plainfitt. Paragraph 19 of the written statement, it has been sated as under:-

"कि वादी का यह कथन कि प्रतिवादी के जिम्मे विवादित भवन का माह मई 92 से माह अक्टूबर सन 1994 तक का किराया रुपये – 10,000/– व जलकर रुपये 2257– व विघुत चार्जिज रु0 254/– बकाया है। कतई गलत एवं असत्य है। वास्तविकता यह है कि जब माह अक्टूबर सन 91 में विवादित भवन प्रतिवादी को स्व0 श्री पातीराम सिंह थपलियाल के द्वारा किराये पर दिया गयातब किराय रुपये 600/– जलकर के तय हुआ था और बिजली का कोई कलेक्षन प्रतिवादी को नही दिया गया था। स्व0 श्री पातीराम सिंह थपलियाल ने प्रतिवादी से माह अक्टूबर सन 1991 में विवादित भवन का अग्रिम किराया रु0 20,000/– प्राप्त किया था जिसका समायोजन भवन के

मासिक किराये में होना था। रु0 600/— प्रतिमाह के हिसाब से किराये का समायोजन करने पर माह जून सन 1994 तक का किराया मद जलकर तथा माह जुलाई सन 1994 के किराये मध्ये समायोजन करने पर रुपये 400/— प्रतिवादी के जिम्मे बाजिव बकाया है यानि माह जुलाई सन 1994 के कराये में प्रतिवादी के जिम्में रु0 400 बाकी होते है तथा माह अगस्त सन 1994 से अब तक का किराया जिसमें जलकर भी शामिल है प्रतिवादि के द्वारा न्यायालय में जमा किया जा चुका है। इस प्रकार विवादित भवन को कोई भी किराया व जलकर प्रतिवादी के जिम्मे बकाया नही है और विघुत चार्जेज के प्रतिवादी के जिम्में बकाया होने का कोई प्रषन ही पैदा नही होता क्योकि कोई विघुत संयोजन तात्कालिक मालिक मकान के द्वारा प्रतिवादी को दिया ही नही गया था। बाबवजूद इसके भी प्रतिवादी ने दिनॉक 1.5.1995 को रु0 30233/— की रकम जिसमें माह मई सन 1992 से 30.4.1995 का किराया, ब्याज, दवा खर्चा जलकर आदि शामिल है बिना षर्त जमा अदालत कर चुका है। हालाकि वादी उक्त सम्पूर्ण धनराषि को पाने का हकदार नही है और न्यायालय के विनिष्चय के मुताबिक प्रतिवादी उक्त रकम मध्ये बाजिव रकम वापस प्रापत करने का आधार पर चलने योग्य नही है और काबिले खरिजा है।

Subsection 6 of Section 20 provides that the same shall be paid to the landlord and as such once the deposit is made it enures for the benefit of the landlord. Sub clause 6 of Section 20 is quoted below:-

> *"Any amount deposited by the tenant under sub-section (4) or under Rule 5 of Order XV of the First Schedule to the Code of Civil Procedure, 1908, shall be paid to the landlord forthwith on his application without prejudice to the parties pleadings and subject to the ultimate decision in the suits."*

In Mahendra Pratap Garg Vs. Smt. Vijai Laxmi General 1983 (1) ARC 74, it has been held by the Division Bench of the Allahabad Court. The observations are quoted below:-

> *"In our opinion, the term 'unconditional' has been used in Section 20(4) in a similar case. If a tenant makes a deposit but, at the same time, states that the amount is not to be paid out to the landlord unless he accepts it in full discharge of the liability, that would be imposing a condition. Or, if the tenant says that the amount deposited by him should be kept in deposit and should not be paid out till the decision of the suit, that will make the deposit conditional. But taking divergent pleas in the written statement as to the extent or quantum of liability to pay rent does not make the deposit conditional. The purpose of the deposit is to pay it to the landlord 'forthwith' (see sub-sec. (6)). The deposit is to be unconditional in the sense that there be no impediment or condition to its immediate payment."*
>
> *In the present case, the landlord claimed that the agreed rent was Rs. 3601/- per month. The tenant pleaded that the agreed rate was Rs. 1251/- per month. The Trial Court found that the agreed rate of rent was Rs. 3601/- per month. The tenant had, however made the deposit at the first hearing in accordance with the rate of rent being Rs. 3601/- per month. The deposit was of the entire amount*

due . It was not accompanied by any condition as explained above. The taking of a plea in the written statement that the rate of rent was different was not imposing any condition. The deposit was unconditional."

" In Inder Kaur Vs. Chandra Shekar it was rightly held that deposit under protest is unconditional. The decision is Ram Krishan's case (supra) to the effect that pleadings do not have any relevance to the unconditionality of the deposit is correct. The view expressed in Laxmi Narain Sharma (supra) and in Haprasad Vs. Dharmadeo that a deposit coupled with a prayer that it be kept in court till decision of the suit was rendered the deposit conditional, is in consonance with out views stated above."

"Learned Counsel for the opposite party strongly relied in Mangel Sen Vs. Kanchid Mal. This decision of the Supreme Court is distinguishable. In that case an additional point was raised before the Supreme Court for the first time that the tenant appellant was entitled to the benefit of Section 20(4). The court found:-

"There is absolutely no material available on the record to show, that the alleged deposit of Rs. 1980/- was made by the tenant on the first date of hearing itself, and, what is more important, that

the said deposit was made by way of unconditional tender for payment to the landlord."

It went on to observe:-

"Further, there is also nothing on record to show that what was deposited was the correct amount calculated in accordance with the provisions of Section 20(4)."

"On these observations the question did not survive. The Court, however, went no to make a passing observation that the deposit even if it was made on the date of first hearing was not an unconditional tender of the amount for payment to the landlord because in the written statement the tenant had denied that he had defaulted or that any arrears existed. Firstly, in the present case there is no such complete denial. Here only a different rate of rent was pleaded in the written statement. In the next place, the judgment of the Supreme Court shows the Court quoted the considered the provisions of Section 20(2) (a) and sub-section (4)."

The Judgment of Mahendra Pratap Garg went to the Apex Court in Smt. Vijay Laxmi Vs. Mahendra Pratap Garg 1985 (2) ARC 298. The Apex Court has held as under:-

" In C.R.P. No. 332 of 1981 filed by the respondent against the judgment of the trial court

a Division Bench of the High Court noticed that one of the conditions of Section 20(4) of the Act is that the tenant should unconditionalyt pay or deposit the entire amount due together with interest and cost and the Section 20 (6) says that any amount deposited under Section 20(4) shall be paid to the landlord without prejudice to the pleadings of the parties and subject to the ultimate decisions in the suit, and they have observed that the submission made febore them on behalf of the appellant that the deposit to be unconditional must be on acknowledgment of the liability for rent as claimed by the landlord if accepted would render the provisions in Section 20(6) of the act nugatory. They have observed that if the tenant makes a deposit with a condition that it shall not be paid to be landlord until the suit is decided it would be a conditional deposit. They have found that in the present case the deposit was not conditional merely because while depositing the amount inclusive of rent at the rate of Rs. 360/- per mensem as claimed in the plaint the respondent had contended in the written statement that the rent is Rs. 125 per mensem and not Rs. 360 per mensem and that pleading in the written statement that the rent is Rs. 125 per mensem and not Rs. 360 per mensem does not make the deposit conditional. In that view the learned Judge allowed the civil revision petition and dismissed the suit with costs in both the courts."

"We entirely agree with the learned Judge of the High Court that the deposit of the amount on the first hearing date, made up of rent at the rate of Rs. 360 per mensem as claimed in the plaint and interest and costs could not be said to be not unconditional merely because The respondent had contended in the written statement that the rent was only Rs. 125 per mensem and he did not succeed in proving it at the trial. It is not possible to construe Section 20(4) foreclosure of any defence regarding the quantum of rent even in cases where the amount alleged by the landlord is more than the real rent agreed between the parties."

"The above principle cannot apply to the facts of the present case, for that case it was not clear whether the deposit of the correct amount was made within the time fixed in Section 20(4) of the Act whereas in the present case it has been found by the learned District Judge that the arrears of rent at the rate claimed in the plaint together with interest and costs had been deposited within the time mentioned in Section 20(4) of the Act."

"The Act is a social piece of legislation which leans in favour of tenants. Merely because the tenant had failed to prove his case that the rent was only Rs. 125 per mensem and not Rs. 360 per mensem, the discretionary relief could not be

denied to him even though he had deposited the arrears of rent at the rate claimed by the landlord in the plaint together with interest and costs within the time mentioned in Section 20(4) of the Act. It is not possible to lay down any broad and general proposition that the discretionary relief should be denied to the tenant in all cases where he fails to prove his case regarding the quantum of rent even though he had deposited the rent at the rate claimed by the landlord in the plaint together with interest and costs within the time as required by Section 20(4) of the Act."

Relying upon the Judgment of Mahendra Pratap Garg Vs. Vijay Laxmi as well as Indra Kumar Vs. Chandra Shekhar 1999 (2) ARC 704. It has been held as under:-

"In Inder Kumar Vs. Chandrashekhar 1979 AWC 556, it was held by a Single Judge of this court that deposit under protest cannot be held to be conditional."

"In the case of Mahendra Pratap Garg Vs. Smt. Vijai Laxmi, reported in 1983 ARC 74, suit for ejectment was filed with the allegation that the defendant was a tenant on a monthly rent of Rs. 360 and he fell in arrears since August 1972. The tenant's defence was that the agreed rent was Rs. 125 only and not Rs. 360 as alleged by the plaintiff and that the defendant was tenant of a larger

Portion of accommodation that acknowleged by the plaintiff in the plaint. The trial court found that the rate of rent was Rs. 360 per month as alleged by the plaintiff. The defendant had at the first rearing, deposited the amount of rent, damanges, costs etc. as provided under Section 20(4) of the Act at the rate of Rs. 360 per month as claimed the plaintiff. In the revision filed by the tenant it was submitted before a single Judge of the Court that the deposit made by the tenant under Section 20(4) of the Act was unconditional and the court below erred in holding otherwise. The learned Singh Judge referred the case to Division Bench finding some inconsistency between two decisions of the Court, namely Ram Kishan's case 1976 A.I.J 763 and Laxmi narain's case 1981 ARC 762 On behalf of the tenant, it was submitted before the Division Bench that pleading that the agreed rate of rent was different than that alleged the plaintiff, is neither material nor relevant to adjucate if the deposit was unconditional. From the side of the plaintiff, however, it was argued that by pleading a lower rate of rent, the defendant imposed a condition on the deposit that he does no admit his liability to pay in excess of that admitted by him in the pleadings and the necessary consequence will be that any amount deposited in excess of the admitted amount was a deposit with denial of liability and a deposit accompanied by or subjected to a denial of liability is a deposit with a condition

imposed on it. The Division Bench after referring to the provisions of Section 20(4) of the Act held as under:-

"15 Sub-section (4), Section20 gives another occasion to the defendant to save his tenancy. It does not insist that the tenant should pay the amount demanded by the landlord in the suit. It asks the tenant to pay the amount due together with interest and costs. The payment, tender or deposit should be unconditional. An unconditional deposit made under sub-section (4) has to be paid out to the landlord forthwith. The payment of the unconditional deposit is under sub-section (6) without prejudice to the parties pleadings and further is subject to the ultimate decision in the suit. The clear intent is that if the tenant pays or deposits the amount due a decree for ejectment should not be passed. Sub-section (6)makes it clear that irrespective of the tenant unconditionally depositing the amount due and the same being paid to the landlord the pleadings of the parties remain operative. The suit is liable to go on if the pleadings raise triable issues. The payment has been made subject to the decision, namely, the findings .The payment of the unconditional deposit to the landlord is without prejudice to the parties pleadings i.e. the pleadings of both the parties are protected of sale guarded. By receiving payment of the unconditional deposit a landlord does not

compromise his pleadings. The payment of the deposit does not imply and admission by the landlord of any part of the tenants case. The same should be the tenant's fate. The making of the payment tender or deposit cannot have any impact or effect on the tenant's pleadings."

" 18 The submission that the deposit to be unconditional must be in acknowledgment of liability as claimed by the landlord will render sub-section(6) suprefluous and otiose."

"19 Under the law of contract, making payment or tender after stating the accounts or under protest is no more than saying payment is offered as believed to be due by the person making the payment or reserving the right of contesting the justice of the claim without prejudice to the making of the payment. In all such cases the person who makes the payment does not impose any condition on payment. The payment is unconditional. In such cases the creditor can take the payment on that footing and says to take the money protest as much as you please and neither party makes any admission of the claim in the other. A Scott Vs. Uxbridge and Rickmansworth RCo. A person making a tender has a right to exclude presumption against himself by saying ***"I pay is as a whole that is due".*** *But if he requires the other party to accept it as all that is*

due, that is imposing a condition (1) Bowen Vs. Owan (ii) Sti Prasad Vs. Monmotha Nath, (iii) Bank of Mysore Vs. B.D.noidu."

"20 In our opinion the term unconditional has been used in section 20 (4) in a similar sense. If a tenant makes a deposit but at the same time, stated that the amount is not to be paid out to the landlord unless he accepts it in full discharges of the liability, that could be imposing a condition Or, if the tenant says that the amount deposited by him should be kept in deposit and should not be paid out till the decision of the suit, that will make the deposit conditional. But taking divergent pleas in the written statement as to the extent or quantum of liability to pay rent does not make the deposit conditiona. The purpose of the deposit is to pay it to the landlord forthwith [See sub-section (b)] . The deposit is to be unconditional in the sense that there be no impediment or condition to its immediate payment."

" The holding of the Division Bench in the aforesaid decision was upheld with approval by the Hon'ble Supreme Court in the appeal filed by the landlord and the said judgment is reported in 1995 (2) ARC 298. The Apex Court also considered the decision in the case of Mangal Sen (Supra) and it was held that the principle laid down in the aforesaid decision could not be applied to the facts

of the case of Vijay Laxmi as in the case of Mangal Sen it was not clear whether the deposit of the correct amount was made within the time fixed under Section 20(4) of the Act. It was also observed by the Apex Court that the Act is a social piece of legislation, which leans in favour of tenants. Merely because the tenant had failed to proves his case that the rent was only Rs. 125 per mensem and not Rs. 360 per mensem, the discretionary relief could not be denied to him even though he had deposited the arrears of rent at the rate claimed by the landlord in the plaint together with interest and costs withinthe time mentioned in Section 20(4) of the Act. It was further held that it is not possible to lay down any broad and general proposition that the discretionary relief should be denied to the tenant in all cases where he fails to prove his case regarding the quantum of rent even though he has deposited the rent at the rate claimed by the landlord in the plaint together with interest and costs within the time required by Section 20(4) of the Act.'

"In the back drop of the above legal position, if we examine the facts of the present case the only conclusion would be that the tenant could not be denied benefit of Section 20(4) of the Act ass undisputedly he had deposited an amount of Rs. 25,000 before the date of first hearing which was far in excess of the total amount required to be

deposited as per the provisions of Section 20(4) of the Act."

"The mere fact that the defendants had also disputed the rate of rent would not deprive them of the benefit of Section 20(4) of the Act if the amount deposited under the said provision was for in excess of the amount required to be deposited even as calculated at the rate of rent claimed by the plaintiff.

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Counsel for the respondent has referred the case of Bhurelal, the facts are distinguishable as in that case the tenant has denied the title of the landlord whereas in the present case the tenant has deposited the amount but due to certain pleadings in the written statement his case was that the plaintiff is not legally entitled to get the amount. The defendant has not denied the title and therefore the amount deposited by the defendant is for the benefit of the landlord himself.

Jurisdiction under Section 25 of the Provincial Small Cause Act.

In Laxmi Kishore and another Vs Har Prasad Shukla 1981 ARC 545, it has been held as under:-

"The Court deciding a revision under Section 25 of the Provincial Small Cause Courts Act has to satisfy that the trial court's decree or order is according to law. Of course, the Revisional Court

should keep in mind the Supreme Court's dictim in Naicker case (supra) that a wrong decision on fact is also a decision according to law."

" If it finds that there is no evidence to sustain a finding on a particular issue of fact, is can ignore that finding. Same will be the case where the finding is based only on inadmissible evidence. In such case, the court will be justified in deciding the question of fact itself, because the evidence is all one way. No assessment is needed. The court can also decide the revision if only a question of law or some preliminary point of law, viz validaity of notice, is sufficient for its decision."

" But, if it finds that a particular finding of fact is vitiated by an error of law, it has a power to pass such order as the justice of the case requisites, but it has no jurisdiction to reassess or reappraise the evidence in order to determine on issue of fact for itself. It it cannot dispose of the case adequately without a finding on a particular issue of fact, it should send the case back after laying down proper guidelines. It cannot inter into the evidence, assess it an determine an issue of fact."

Conclusion

In view of the aforesaid facts and circumstances, the Civil Revision is remanded to the court below for deciding the case.

in the light of the observations made in the body of the judgment.

The judge Small Cause Court shall record the finding to the following effect:-

(a) Whether the landlord has been able to prove the default as contemplated under Section 20 (4) of the U.P. Act No. 13 of 1972.

(b) Whether the deposits made by the petitioner are conditional or unconditional. The finding shall be recorded by the Judge Small Cause Court after perusing the pleadings of the parties in the light of the observations and the Judgment of the Apex Court.

(c) Whether the tenant has complied with the provisions of Section 20(4) of the Act, so as to grant any immunity form eviction.

The Civil Revision is allowed. The matter is sent back to the court below to decide in accordance with the observations made above within a period of 4 months from the receipt of the certified copy of the order

Dated:- 29-9-2004 **(RAJESH TANDON J.)**

M.K.